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*Sandra J. Dearden, President*

**May 22, 2008**

**To the Surface Transportation Board:**

**The Honorable Charles D. Nottingham, Chairman**

**The Honorable Francis P. Mulvey, Vice Chairman**

**The Honorable W. Douglas Buttrey, Member**

**Re: Ex Parte No. 677, Common Carrier Obligation of Railroads**

**To the Members of the Board:**

There are two topics that were discussed during your hearing in Ex Parte No 677 on April 25, 2008, that I would like to address in this supplemental statement.

**Railroads Cutting Switches to Industry Tracks**

For over a century, the railroads' fundamental "common carrier obligation" has embodied the tenet of "reasonable service upon reasonable demand." Unfortunately, all too often in recent years, this fundamental obligation has suffered severe erosion as railroads, and particularly Class I railroads, have embarked upon a policy of curtailing service through manipulation of the most basic element of service to shippers – the industry track switch connection. Many Class I carriers routinely require a provision in their industry track agreements with shippers that, if the agreement is terminated, the carrier no longer has any obligation to serve that shipper. Similarly, certain Class I railroads reevaluate their obligation to serve an industry track each time a new shipper locates on that track in lieu of the pre-existing shipper. And, if the volume proposed by the new shipper does not meet the carrier's requirements, service is terminated. Shippers who haven't used their industry track for some period of time understandably stand in fear that the carrier will refuse to resume service when that service is actually needed.

Class I railroads take the position that, if the resumption of service will impede the efficient operations on the adjoining main line, then they are entitled to refuse a resumption of service. And, finally, Class I carriers have taken the position that reconfiguration or upgrades to their main lines entitle them to permanently cut off service to adjoining industry tracks and shippers.

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Chairman Nottingham was entirely correct to express his concern regarding this issue at the oral hearing in this proceeding. Whatever happened to "reasonable service upon reasonable demand?" It has always been fundamental in our railroading experience that a shipper has a right to obtain a switch connection. Yes, the shipper might have to pay for all or a portion of that connection; yes, that shipper might have to meet certain engineering and track standards required by the applicable railroad; and, yes, that switch connection should not be placed in a location which would compromise railroad safety. But, existing industry tracks are being eliminated by the Class I carriers at an alarming rate simply on the basis that the Class I railroads think they have the unfettered right to terminate service as they see fit.

There can be no more important role of this Board than to reaffirm the fundamental obligation of railroads to serve shippers. And that means, if a shipper desires service and a switch connection to obtain that service, that shipper, under the fundamental "common carrier obligation," is entitled to that switch connection and service absent overriding safety or engineering considerations. If the Class I railroads can pick and choose whom they desire to serve and cut off the switch connections to those they no longer desire to serve, then there is no common carrier obligation. We urge the Board to reverse the erosion of this obligation and reaffirm shippers' entitlement to industry track switch connections.

#### Uniform Rail Costing System (URCS) Costs

Mr. Hamberger of the Association of American Railroads (AAR) posed the question if all of the costs associated with transporting TIH commodities are reflected in URCS. While it would require some in-depth analysis to confirm all of the cost components included in URCS, we believe it likely that the railroads have reported all of their costs since it is in their best interests to do so, and most likely the real question is how the costs are allocated.

As set forth in my verified statement in STB Finance Docket 36063, Michigan Central Railway, LLC, Acquisition and Operation Exemption Lines of Norfolk Southern Railway Company, URCS does not reflect costs used by the railroads for decision making. Further, URCS has not been updated since it was adopted in 1989, and URCS costs are significantly higher than costs calculated by our costing model that is based on data as reported by the railroads in the R-1 reports.

When looking at the railroad industry pre-Staggers and post-Staggers, the industry has changed dramatically. The railroads are producing more with less, so the operating relationships and regression equations have changed, while URCS has not.

URCS relies on switching studies and special studies that are severely outdated, some 50 years or more. For example, in the early 50's, switching

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operations were paper-generated orders managed by yardmasters. Today, the railroads use state-of-the art technology and paperless transactions.

Summarized below are some facts that support a theory that URCS requires review:

	<u>1980<sup>1</sup></u>	<u>2004<sup>2</sup></u>
Revenue Ton Miles Per Employee (millions)	2.1	10.6
Revenue Ton Miles Per Employee Hour	1,776	3,908
Revenue Ton Miles Per Gallon of Fuel Consumed	235	410
Net Ton Miles Per Train Hour	40,392	59,209
Revenue Ton Miles Per Carload	41,352	55,245

We agree that URCS requires review and that a special proceeding on URCS may be warranted. However, the new version of URCS, which will reflect the new method for calculation of railroads' cost of capital, will be released soon. Therefore, it is our recommendation that if a decision is made to initiate a proceeding on URCS, that decision should be based on the new version of URCS. I will send a subsequent report once we have reviewed the new version of URCS.

We appreciate the time and effort that the Board is expending on these common carrier issues and we encourage the Board to reaffirm that the railroads do, indeed, have a common carrier obligation.

Respectfully,

  
Sandra J. Dearden

<sup>1</sup> Railroad Facts, 1990 Edition.

<sup>2</sup> Railroad Facts, 2005 Edition.